No. 82-370

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IN THE

SUPREME COURT OF THE UNITED STATES

MARILYN CARPENTER

Appellant,

V.

JAY S. HAMMOND, GOVERNOR OF ALASKA,

Appellee.

ON APPEAL FROM THE SUPREME COURT
FOR THE STATE OF ALASKA

JURISDICTIONAL STATEMENT

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August, 1982

THE QUESTIONS PRESENTED

1. May a state require military and military-related persons to meet a more restrictive test of state citizenship than other residents in order to be counted in a legislative apportionment population base.

2. May a state use a standard of state citizenship for apportionment purposes which excludes those residents who intend to leave the state at some time in the future.

3. May a state use one standard of citizenship for voter registration and a second, more restrictive standard for purposes of legislative apportionment.

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ON APPEAL FROM THE SUPREME COURT
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JURISDICTIONAL STATEMENT

OPINIONS BELOW

The Alaska Supreme Court has yet to issue an opinion in this case. A copy of its order affirming the judgment of the Superior Court is included in Appendix A. The opinion of the Superior Court has not been published but has been reprinted in Appendix B.

JURISDICTION OF THIS COURT

This is an appeal from the final judgment of the Alaska Supreme Court holding that Appellee's July 24, 1981 proclamation of reapportionment is constitutional. Appellant challenged the proclamation on the ground that it violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

On June 1, 1982 the Alaska Supreme Court issued an order affirming the judgment of the Superior Court on federal constitutional issues. The Court held under advisement a claim based on Alaska constitutional provisions. An opinion will not be issued until a decision is reached on the remaining state question. Appellant filed a Notice of Appeal to this Court with the Clerk of Appellate Courts of the State of Alaska on August 23, 1982.

This Court has jurisdiction under 28 U.S.C. §1257(2) to hear this appeal.

This action was originally brought under Article VI, §11 of the Alaska Constitution which permits any registered voter to bring an action to correct any error in a plan of apportionment. The jurisdictional pleading in Appellant's complaint alleges only that she is a registered voter. In its June 1, 1982 Order, the Alaska Supreme Court found that to be sufficient to meet the requirements of the Alaska constitution.

Appellee had challenged Appellant at both stages of the proceeding below on the grounds that she did not plead sufficient standing. In order to allow this Court to deal with the substantive issues of the case, Appellant has filed with her jurisdictional statement a motion to

amend her complaint to allege further jurisdictional facts. The motion is filed pursuant to 28 U.S.C. §1653 which allows defective allegations of jurisdiction to be amended in trial or appellate courts in order to avoid dismissal of suits on technical grounds.

In Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150 (1970), this Court established a two-part test for standing. First, the plaintiff must have suffered injury in fact. Second, the interest sought to be protected by the complainant must be arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.

Appellant has suffered injury in fact from Appellee's actions. She resides in a district which is underrepre-

sented in the apportionment plan. She also has suffered injury from Appellee's treatment of the military. The plan excludes from the apportionment population base 1,480.5 military and military-related persons who reside in Appellant's house district and 2,021.5 persons who reside in her senate district. Appellee's failure to count those persons directly affects the degree and quality of Appellant's representation in the legislature and dilutes the weight of her vote in legislative elections.

In Reynolds v. Sims, 377 U.S. 533 (1964) this Court held that equality of political representation in state legislatures is protected by the equal protection clause of the Fourteenth Amendment.

PROVISIONS INVOLVED

Appellant has challenged the constitutionality of the Proclamation of Reapportionment and Redistricting issued by Appellee on July 24, 1981. The Proclamation is reprinted in Appendix D.

The Proclamation adopts the report of the Governor's Advisory Board on Reapportionment which includes an apportionment base developed according to the citizenship criteria challenged by the Appellant. The portion of the report dealing with the military is reprinted in Appendix E.

Appellant contends that the citizenship criteria adopted by Appellee and its application to military and military-related persons violates Section I of the Fourteenth Amendment to the United States Constitution which states:

"Section I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

This action was originally brought under Article VI, Section II of the Alaska Constitution which provides:

"Section II. Enforcement. Any qualified voter may apply to the superior court to compel the governor, by mandamus or otherwise, to perform his reapportionment duties or to correct any error in redistricting or reapportionment. Application to compel the governor to perform his reapportionment duties must be filed within thirty days of the expiration of either of the two ninety-day periods specified in this article. Application to compel correction of any error in redistricting or reapportionment must be filed within thirty days following the proclamation.

> Original jurisdiction in these matters is hereby vested in the superior court. On appeal, the cause shall be reviewed by the supreme court upon the law and the facts."

STATEMENT OF THE CASE

Appellee Jay S. Hammond is the Governor of the State of Alaska. On July 24, 1981 he issued a Proclamation of Reapportionment and Redistricting for the Alaska Legislature. The plan contained in the Proclamation uses a "state citizen" population base of 369,117.2 - 31,363.8 fewer persons than the number of persons enumerated in the 1980 United States Census. The lower number resulted from adjustments made to the census figures to remove certain military and military-related persons from the population base.

Using Appellee's state citizen population base, the population variances

among the districts range from 4.0 percent overrepresented to 5.8 percent underrepresented in the State Senate and from 4.17 percent overrepresented to 5.8 percent underrepresented in the State House. When the 1980 census figures are used as a population base, however, the variances range from 11.3 percent overrepresented to 31.1 percent underrepresented in the State Senate and from 11.3 percent overrepresented to 60.6 percent underrepresented in the State House.

The adjustments to the census figures were based on two studies commissioned by the Governor's Advisory Reapportionment Board. The first attempted to estimate the number of nonresidents who were likely to be included

in the census count and their potential effect on reapportionment. After studying aliens and various classes of potential non-residents, including fish processing employees, lumber camp workers, felons, students and oil camp employees, the Advisory Board concluded that only military personnel and their dependents should be subjected to further inquiry. The other classes were dismissed as insignificant to the reapportionment process or the board considered the complexity and cost of further inquiry to be prohibitive.

Once military personnel and their dependents had been singled out for a more intensive reivew of their citizenship qualifications, a second study was conducted. It's purpose was to determine the number of military personnel and

dependents at various locations who were state citizens. The study consisted of a questionnaire which was distributed to a sampling of military personnel to survey their citizenship characteristics.

For purposes of determining citizenship, all military personnel who had registered to vote in Alaska were treated as Alaska residents. In addition, all personnel who currently considered their home to be in Alaska and were planning to make Alaska their home when they left the military were treated as citizens. Military personnel who considered Alaska to be their home, but had not registered to vote and did not plan on living in Alaska following completion of their military service were not counted as state citizens. Military dependents were treated as state citizens only if they

had registered to vote in Alaska or if they considered Alaska to be their home and intended to live here in the future.

The questionnaires were mailed to a random sample of personnel stationed at the seven (7) largest military installations in Alaska. Based on the responses, "non-resident population coefficients" were determined for each installation and the surrounding off-base areas. These figures were used to reduce the military and dependent populations in the census enumeration districts at each location.

On August 24, 1981 Appellant filed this action in the Superior Court. Appellant challenged the constitutionality of the citizenship standard used for apportionment and its application to military personnel and dependents.

On March 26, 1982 the Superior Court

issued its decision. The Court upheld the constituionality of the citizenship standard used by Appellee but required that the non-residency factor dervied from it be applied at all military installations rather than just the seven largest. The Court's order resulted in the further reduction of the population base by 2,066.91 military personnel. This necessitated minor adjustments to the boundaries of three house districts and two senate districts.

The decision of the Superior Court was appealed to the Alaska Supreme Court. On June 1, 1982 the Alaska Supreme Court issued an order affirming the judgment of the lower court on all federal constitutional issues. The Court held under advisement a question related to state constitutional issues. An opinion will

not be issued until after final determination of the remaining state issue which is independent of the questions presented here.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

1. This case presents almost the converse of the issues dealt with by this Court in Dunn v. Blumstein, 405 U.S. 330 (1972). That case involved discrimination by a State against the voting rights of residents who had recently moved into the State. This case deals with discrimination by a State against residents who intend to move out of the State at some time in the future.

Prior to the Alaska Supreme Court's decision in this case, five federal and state courts had considered the constitutionality of the citizenship test used in Appellee's apportionment plan. All five had concluded that it was unconstitu-

tional and all five reached that conclusion in unanimous opinions. The Alaska Supreme Court stands alone in affirming it.

The citizenship test used by Appelle requires that, in addition to presently considering himself to be a resident, an individual must also intend to remain a resident indefinitely. Anyone who intends to leave the state at some point in the future and not return is ineligible for state citizenship under this test. Appellee used the test to exclude 31,363.8 military and military-related persons from the apportionment population base. The Superior Court, using the same standard exluded an additional 2,066.91 military personnel.

In numerous cases during the sixties and seventies, including Reynolds v.

Sims, 377 U.S. 533 (1964), Carrington v. Rush, 380 U.S. 89 (1965), Kramer v. Union Free School District No. 15, 395 U.S. 621 (1969), Evans v. Cornman, 398 U.S. 419 (1970) and Dunn v. Blumstein 405 U.S. 330 (1972), this court established the principle that every citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in a jurisdiction. Before an individual's right to participate in the electoral process can be restricted, the purpose of the restriction and the state interest it serves must meet close constitutional scrutiny. In Dunn v. Blumstein, 405 U.S. 330 (1972), this Court held that such restrictions can only meet close constitutional scrutiny if they are appropriately defined, uniformly applied and necessary to preserve

the basic conception of a political community.

Appellee's standard invidiously discriminates against the more mobile elements of the population. No matter how long a person remains in the community or how deeply involved a person becomes in community affairs or how strongly a person feels that Alaska is his home, he will never be a citizen under Appellee's test if he plans to leave at sometime in the future. Where one will make their home in 20 years or even 2 or 3 years is an unrealistic constraint on the concept of citizenships for voting purposes in our highly mobile society. It is particulary unrealistic in Alaska in light of what the Alaska Supreme Court itself referred to in Egan v. Hammond, 502 P.2d 856

(Alaska 1972), as the state's "chronic mobility".

But even in less transient states, courts have found the future intent test to be an unrealistic constraint on the concept of citizenship. In Newburger v. Peterson, 344 F. Supp. 559 (D.N.H. 1972), a three-judge court considered the constitutionality of a New Hampshire election law which disqualified persons who intended to leave town at a fixed time in the future from voting in municipal elections. The court held that the test offended the equal protection clause of the Fourteenth Amendment and concluded that, in this day of widespread planning for change of scene and occupation, it could not see how a requirement of permanent or indefinite intent to stay in one place was relevant to responsible citizenship.

The court found that there were less restrictive alternatives to the requirement that one must say that he will always -or definitely- live in a particular town.

In Ramey v. Rockefeller, 348 F. Supp. 780 (E.D.N.Y. 1972) another three-judge court addressed the constitutionality of applying future intent requirements to voting eligibility. The court found that the only constitutionally permissible test under the equal protection clause is one which focuses on the individual's present intention and does not require him to pledge allegiance for an indefinite future. It is sufficient if an individual intends to make a place his home for the time at least.

Two state supreme courts have also considered the constitutionality of

future intent requirements for voting.

In Lloyd v. Babb, 251 S.E. 2d 843 (N.C. 1979), the North Carolina Supreme Court found that the test, if it were imposed on all citizens, would go too far in restricting the vote to the more immobile elements of the populace. And the New Jersey Supreme Court in Worden v. Mercer County Board of Elections, 294 A.2d 233 (N.J. 1972) noted that even residents of limited duration may have a strong sense of community involvement, may be affected by the outcomes of local elections and may be concerned about and aware of community issues, values, and personalities. It found the future intent test unsupported by any compelling state interest in its application. Both courts held the test to be in violation of the equal protection clause.

Although the four cases cited above involved students who intended to leave their college communities following graduation, the principles enunciated apply with equal force to military personnel as well. In fact, the Newburger Court specifically noted the hardship the test would work on military personnel station on a tour of duty in New Hampshire. And in a case closely on point, the New Jersey Superior Court's Appellate Division specifically held that Worden v. Mercer County invalidated future intent requirements for the military as well as for students. Marks v. Township of New Hanover, 308 A.2d 24 (N.J. Super. 1973), is particulary noteworthy because it involved the right of military personnel and members of their households to be counted as bonda fide residents in a

determination of the number of inhabitants for the purpose of fixing the size of the municipal governing body - just the type of representational question at issue here.

The Alaska Supreme Court's Order is so contrary to the weight of decided caselaw and adversely affects the fundamental rights of so many people that this Court should not allow the decision to stand.

2. Attempts by states to discriminate against military personnel in the exercise of their political rights are not new to this Court. In Carrington v. Rush, 380 U.S. 89 (1965), the Court invalidated a provision of the Texas Constitution which denied voting residence to military personnel stationed in Texas who had not established a Texas voting residence

prior to entering the service. While the Court recognized the right of States to require voters to be bona fide residents, it held that military personel must be afforded an equal opportunity for political representation. It noted that there is no indication in the Constitution that occupation affords a permissible basis for distinguishing between qualified voters within a state.

This court applied that same reasoning to apportionment in Davis v. Mann, 377 U.S. 678 (1964) and Mahan v. Howell 410 U.S. 315 (1973). Discrimination against the military in apportionnment plans, merely because of the nature of their employment, without more being shown, is constitutionally impermissible.

The Alaska apportionment plan, however, does discriminate against mili-

tary personnel and members of their households. They were held to a higher standard of citizenship than other residents in the establishment of the plan. Only the military were required to meet the future intent test in order to be counted. In its opinion, the Superior Court acknowledged the holding in Newburger v. Peterson 344 F. Supp. 559 (D.N.H. 1972), which declared the future intent test unconstitutional. But the Court concluded that the unconstitutional standard could be applied to military personnel because they were present in Alaska under the constraints of military assignment and unable to freely exercise their choice of domicile. That is exactly the type of discrimination based on the nature of military employment which Carrington, Davis and Mahan prohi-

bit. Appellee has not shown that the military and military-related persons who were excluded do not meet bonda fide residency requirements. He has only shown that they do not meet the more restrictive residency test which was applied exclusively to the military.

Even if legal compulsion were a valid justification for the application of a higher standard to military personnel, Appellee has no justification for its application to military-related persons who are not members of the armed services. All are here voluntarily and all are legally free to leave at any time. Since they are already completely free of the constraints of legal compulsion and can freely exercise their choice of residence, any inquiry into their future intent subjects them to a

higher standard than other residents not in the state under legal compulsion. Yet the exclusion of thousands of military-related persons was permitted by the Alaska Courts under the legal compulsion rationale.

Appellee also contends that the counting of all registered military voters, regardless of whether or not they met the future intent test, was an additional safeguard which protected bona fide military residents. Actually, all it does is create additional equal protection problems within the military class itself. Military and dependents who were registered to vote were automatically included in the population base. Thus, anyone who met the elections code residency requirements and had registered to vote was counted. However, those per-

sons who met the elections code residency requirements but had not registered were excluded unless they also met the more restrictive future intent test. Military personnel with identical qualifications could have been included or excluded based solely on whether or not they happened to have been registered on the day of the survey.

3. Appellee's use of a future intent test for apportionment has established two different residency standards for elections purposes in Alaska. Elections officials testified that in order to register to vote an individual need only have a present intent to be a state resident. Under that standard, military personnel are routinely registered without any inquiry into their future plans. But for apportionment a different standard

applies. To be represented in the legislature an individual must demonstrate an additional intent to remain indefinitely. Thus, military personnel who consider Alaska to be their home, but who intend to leave at a future time, can register to vote in legislative elections but are not entitled to be counted in the apportionment of the legislature.

In Gray v. Sanders, 372 U.S. 368 (1963), this Court held that once a State chooses its class of voters and specifies their qualifications, there is no constitutional way by which equality of voting power may be evaded. But appellee has done percisely that. The residency provisions of the election code have been rejected in favor of Appellee's own arbitrary test, thereby denying represen-

tation to those otherwise eligible to vote but unable to meet restrictive apportionment standard.

In Dunn v. Blumstein (1972), this Court held that any test of domicile for elections purposes must exclude only those whose exclusion is necessary to preserve the basic conception of a political community. Under strict scrutiny a restriction on the right to vote must be struck down unless a state can demonstrate that it is necessary to further a compelling state interest, and is the least drastic means available to further that interest.

Appellees test clearly fails to pass strict scrutiny. The future intent test is not necessary to preserve the basic conception of the Alaska political community. For many years the less restric-

tive standards of the elections code have accomplished that goal. Appellee has yet to show why a higher standard is so compellingly necessary for legislative apportionment, when a much less drastic standard is sufficient for legislative elections. It is difficult to see any state interest, must less a compelling one, in using two different residency tests for elections purposes.

CONCLUSION

This case involves substantial constitutional questions regarding equal protection and the political rights of military personnel and members of their households. In this highly mobile nation there are few groups more mobile than servicemembers and their families. This mobility and their short-term residencies make them particulary vulnerable to

political discrimination by the States. If this Court allows the decision of the Alaska Supreme Court to stand, it could be interpreted as a retreat from the position take by the Court in Carrington v. Rush, 380 U.S. 89 (1966), that military personnel are fully entitled to the rights of state citizenship protected by the Fourteenth Amendment. More immediately, it will allow the State of Alaska to continue its discriminatory practices and perpetutate the underrepresentation of military personnel and those other Alaskans who reside in election districts with them.

Respectfully submitted,

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August, 1982

APPENDIX A

ORDER OF THE ALASKA SUPREME COURT

ISSUED ON JUNE 1, 1982

THE SUPREME COURT OF THE STATE OF ALASKA

MARILYN CARPENTER,	)	
Appellant,	)	
vs.	)	File No. 6728
JAY S. HAMMOND, Governor of the State of Alaska,	)	
Appellee.	)	

Before: Burke, Chief Justice, Rabinowitz, Connor, Matthews and Compton, Justices.

O R D E R

1. Appellee's motion to dismiss certain portions of this appeal, upon the ground that appellant lacks standing to raise some of the issues set forth in appellant's points on appeal, is denied.

2. Appellant's claim that the inclusion of Cordova in House District 2 and Senate District B violates Article VI, Section 6, of the Alaska Constitution remains under advisement. Otherwise, the judgment of the superior court is affirmed.

3. Pending our determination of the issue remaining under advisement, described in Paragraph 2 hereof, the Governor's 1981 legislative reapportionment and redistricting plan is approved, as an interim measure, for elections to be held in House District 2 and Senate District B in 1982.

4. An opinion will follow our determination of the remaining issue.

By direction of the Court, IT IS SO ORDERED.*

Done at Anchorage, Alaska this _____ day of August, 1982.

CLERK OF THE APPELLATE COURTS

By: _____
Robert D. Bacon, Clerk

* Rabinowitz, Justice, dissenting. I dissent from Paragraphs 2 and 4 of the court's order. I would enter an order affirming the reapportionment board's inclusion of Cordova in House District 2 and Senate District B and thus would affirm the superior court's judgment in this respect as well.

IN THE SUPERIOR COURT
FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

MARILYN CARPENTER, Plaintiff,	)	
vs.	)	Case No. 3AN-81-5839 Civil
JAY S. HAMMOND, Governor of Alaska, Defendant.	)	

FINAL JUDGMENT

The trial in this action commenced on March 8, 1982, before the Honorable Daniel A. Moore, Jr. and concluded on March 17, 1982. Final arguments were held on March 22, 1982, and the parties filed proposed findings of fact and conclusions of law. Plaintiff was represented by Attorneys Holli I. Ploog and Francis M. Flavin. Defendant was represented by Attorney Thomas M. Jahnke.

The court having fully considered the testimony of the witnesses, exhibits and pleadings filed, and the arguments of counsel herein rendered its decision in this matter.

I. Introduction

The defendant, Jay S. Hammond, is the duly elected Governor of the State of Alaska. As such he is charged with the duty of appointing a Reapportionment Advisory Board, issuing a proclamation of reapportionment and redistricting and other duties prescribed in the Constitution and laws of Alaska. On July 10, 1981, the Reapportionment Advisory Board submitted a Reapportionment and Redistricting Plan for the Alaska State Legislature to the Governor. On July 24, 1981, the defendant issued a Proclamation of Reapportionment and Redistricting for

the Alaska Legislature.

The plaintiff is a citizen and voter of the United States and the State of Alaska and is entitled to vote for members of the House of Representatives and the Senate of the State of Alaska. Plaintiff brought this action, pursuant to Article VI, §11, of the Constitution of the State of Alaska, to compel the Governor to correct alleged errors contained in the plan of redistricting issued on July 24, 1981.

Two basic issues are presented in the action. First, did the Governor use permissible methods in identifying and excluding certain non-residents from the apportionment base. Secondly, does the Cordova-Inside Passage election district (House Election District Number 2) conform to the constitutional requirement

that a district be compact and that it contain as nearly as practicable a relatively integrated socio-economic area.

II. Exclusion of Non-Residents

Standard of Review

The plaintiff challenges the constitutionality of the Governor's exclusion of non-residents in three areas of decision: (1) foregoing the detailed study of civilian groups thought to contain large numbers of non-residents when the military was so studied, (2) declining to exclude from the reapportionment population base certain numbers of non-resident military in remote areas of the State, and (3) using a survey questionnaire, which the plaintiff claims does not meet constitutional standards, to determine the residency characteristics of the military.

The primary contention of the plaintiff is that these decisions deny her and other voters the constitutional protections guaranteed by the equal protection provisions of the U.S. Constitution. In an equal protection analysis, the degree of scrutiny required depends on whether the actions taken involve a suspect classification or touch on fundamental interests. The U.S. Supreme Court has held that "the right to vote, as the citizen's link to his laws and government, is protective of all fundamental rights and privileges... [a]nd before that right can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet close constitutional scrutiny." Evans v. Cornman, 398 U.S. 419, 422 (1970). On this basis, the court has struck down

requirements that a would-be voter had been a resident of the state for a year, Dunn v. Blumstein, 405 U.S. 330 (1972), and also struck down a law prohibiting a member of the armed forces who moved to a state during military service from voting in that state, Carrington v. Rash, 380 U.S. 89 (1965).

The defendant argues that reapportionment is different from voter registration, and cites Egan v. Hammond, 502 P.2d 856, 869 (Alaska 1972) for the proposition that a lesser degree of precision is required for apportionment than is required in dealing with the strict right to vote. While it is true that many factors including the general mobility of the population made mathematical precision impossible in reapportionment, the U.S. Supreme Court has recognized

that "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." Reynolds v. Sims, 377 U.S. 533, 555 (1964). In a later decision the court noted that "state apportionment statutes, which may dilute the effectiveness of some citizens' votes, receive close scrutiny from this Court." Kramer v. Union Free School District, 395 U.S. 621, 626 (1969).

Reynolds stated that "the overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the State." 377 U.S. at 579. The court declined to lay

out any constitutional standards, preferring to lay the groundwork for "developing a body of doctrine on a case-by-case basis." 377 U.S. at 578. Later cases developed some principles such as finding that a built-in bias against more populous counties is unconstitutional. WMCA Inc. v. Lomenzo, 377 U.S. 633 (1964). The court also found that states are not required to "include aliens, transients, short-term or temporary residents, or persons denied the vote for conviction of crime in the apportionment base." Burns v. Richardson 384 U.S. 73, 92 (1966). The court had earlier ruled, however, that under-representation of a district simply because it contained large numbers of military and military-related personnel was unconstitutional. Davis v. Mann, 377 U.S. 678 (1964). The

Alaska Court specifically approved excluding military non-residents from the apportionment base once a constitutionally permissible method for determining their number was devised. Groh v. Egan, 526 P.2d 863, 872 (Alaska 1974).

While these cases provide some guidance as to what is permissible and impermissible in reapportionment, they do not provide clear standards for culling out non-citizens from the reapportionment base. The language of equal protection analysis in Evans and Kramer, supra, appear to require the application of a strict scrutiny standard to whatever means of reapportionment are used.

In claiming that the plaintiff has the burden of proof, the defendant argues in effect for the rational basis test of the equal protection analysis, citing

Egan v. Hammond, 502 P.2d at 873. This case, and the U.S. Supreme Court cases on which it is based, all deal with the assertion of discrimination in the creation of multi-member districts allegedly submerging the interests of groups within the districts. That is not the issue in the present case. Where, as in this case, defects are alleged in the accuracy of the count of citizens making up certain districts, the reasoning of Evans and Kramer would appear to require the application of a strict scrutiny test. The plaintiff having made out a prima facie equal protection case, the burden falls on the defendant to show a compelling state interest and the use of the least restrictive alternatives to accomplish that state interest.

The defendant has met the first part

of the test, showing a compelling state interest in defining the population properly to prevent dilution of voter influence. Reynolds v. Sims, supra. The question to be applied to each of the three decisions (to use the questionnaire inquiring about future intent, to poll only military, and to poll only selected military sites) would be whether the defendant's methods were sufficiently precise in achieving the desired purpose and whether there were less restrictive alternatives, i.e. alternative methods which would place a lesser burden on the protected activity, the right to vote.

III. Findings of Fact

A study conducted by Dr. John A. Kruse, of the Institute of Social and Economic Research, of the University of Alaska (ISER) concluded that the only

groups of potential non-residents present in the population in significant numbers were military personnel and their dependents. Dr. Kruse recommended a study be conducted of this group at seven (7) installations in the State, namely Fort Richardson and Elemendorf AFB in Anchorage, Fort Wainwright and Eielson AFB in Fairbanks, Fort Greely at Delta Junction, the Kodiak Coast Guard Station, and the Adak Naval Base.

Although the initial study of fish processing employees indicated significant numbers of non-residents in the Aleutians and Bristol Bay, Dr. Kruse recommended no survey be conducted of this group because of the anticipated difficulty in conducting such a survey, and because a substantial census bureau undercount of this workforce was expected

due to several factors:

a. Lack of preparation by the census bureau created the likelihood that some fish processing units, many of which are mobile, floating units, would be missed by census enumerators or that groups within the units would be missed;

b. The census bureau was not able to obtain from the companies a list of employees with which it could organize the count and against which it could verify the coverage of the enumeration; a list is an essential tool in locating all the persons in a unit;

c. Pocessing unit managers would, according to knowledgeable sources contacted by Dr. Kruse, be reluctant to permit disruptions of their operations to facilitate census enumeration;

d. The work shifts, group living

and dining arrangements would complicate the task of identifying and interviewing each individual at a fish processing unit;

e. Language barriers were expected to prevent a full and a complete enumeration;

f. Low pay for census enumerators and the poor qualifications of persons employed as enumerators would reduce the chances that the enumerators would take the initiative to overcome these difficulties.

Fish processing workers who, in a box on the special census form provided them, gave a home address other than the fish processing unit were counted at that other address, be it in another state or another part of Alaska. The census forms given military servicemembers and other

civilians (except lumber and oil base camp workers) lacked such a box; those persons were counted at those places where they were physically located.

It would not have been an acceptable demographic research technique to make deductions from such an unreliable census count; even if the numbers deducted were based on reliable research data, the result of the subtraction would contain all the inaccuracies of the census count.

Because of the likely census undercount, deduction of some non-resident proportion of the census population would work a double elimination: There would have been removed from the population base persons who had never been counted in the first instance.

Dr. Kruse, as part of a post-census study of census procedures, certified

that all the problems anticipated with the census enumeration of fish processing workers did indeed occur.

Group quarters census data, which first became available four months after the Governor promulgated his reapportionment plan, verified Dr. Kruse's prediction of a substantial undercount of fish processing workers: Whereas 2,472 workers were reported to be employed and housed in group quarters on the Aleutian Chain and in Bristol Bay, the census bureau counted only 760.

The means by which the Governor might have surveyed fish processing workers to determine the number of non-residents presented substantial difficulties that would have undermined the reliability of the results. The same problems applied to lumber workers,

making any survey of lumber workers difficult and the results unreliable.

There were no other readily-identifiable groups with numbers and concentration of residency characteristics that would influence Alaska's legislative apportionment, except the military.

The Governor deducted from the reapportionment population base those numbers of non-resident military personnel and dependents who resided at or near the seven largest military installations in Alaska, after surveying a scientific sample of the personnel at those seven sites. It was not recommended that all of the military installations be surveyed because it was determined that there were not significant numbers of military personnel and their dependents at installations other than the seven selected.

There were approximately 2,067 non-resident military personnel at smaller installations on the Aleutians, in Bristol Bay, in Interior Alaska and in Southeast Alaska. The largest numbers of non-residents were at Shemya and King Salmon in District 26 (851), Galena in District 24 (259), Juneau (195), Sitka (137), Ketchikan (133) and Clear in District 17 (100).

Had all these numbers of non-resident military, and those at other locations not listed in the preceding paragraph, been deducted from the population base, that population base would have become 367,050 and the ideal district size would have become 9,176. See Appendix I, attached hereto.

Under this scheme, the most over-populated district would be District 25

with 9,684 persons (+5.53%); the most underpopulated district would be District 26 with 8,628 persons (-5.97%); and the combined variation from the ideal district size would be 11.50%. See Appendix II, attached hereto.

Military personnel are compelled, under penalty of military discipline or criminal liability, to live in Alaska. Most military personnel and their dependents live on self-contained, insular reservations.

Civilians and their dependents vote at a rate 5.6 times greater than military personnel and dependents. In the 1980 general election in Alaska, which included the election of the President of the United States, voter turnout in civilian precincts as a proportion of total population, was approximately 455. In

military precincts the comparable figure was 8%.

The proportion of military claiming Alaska to be their home was calculated from responses to three questions: First, "Do you consider your home to be in Alaska or some other state?" Second, "Do you plan to make your home in Alaska or some other state when you leave the military?" Third, "Are you registered to vote in the State of Alaska?" Persons who answered "Alaska" to the first two questions or who were registered voters, were counted as Alaska residents, yielding an average residency factor of 25%.

IV. Conclusions of Law

Courts have declared the use of a future intent test for voting unconstitutional as applied to certain groups, e.g.

college students in Newburger v. Peterson, 344 F. Supp. 559 (D.C. N.H. 1972). Because military personnel are in the unique position of being in the state under legal compulsion, however, and because there is an established pattern of lack of participation by military personnel in the political life of the community where they are stationed, it was constitutionally permissible to inquire about their intent to establish a home in the state once they would be free of the constraints of military assignment. An additional safeguard was provided by first counting all registered voters among the military as residents for purposes of reapportionment.

The alternative of counting all military and dependents as residents for purposes of reapportionment, which the

plaintiff suggests, would place a much greater burden on the protected activity, the right to vote, by diluting the vote of some residents. This is because voting districts near military reservations would include an admittedly large group of military who "exercise an option to be non-Alaskans despite their physical presence here." Groh v. Egan, 526 P.2d at 872.

Because of the formidable difficulties in making an accurate count of fish processing and lumber workers, and because of the likelihood of a census undercount and reallocation of many of those workers, it was constitutionally permissible to exclude identifiable non-resident military personnel and dependents from the reapportionment population base while including non-identifiable

members of other groups. The only alternative was to do a technically problematic survey with the real possibility of a double elimination of non-residents. The Governor was justified in deciding this alternative might well have placed a greater burden on the protected activity.

Because of the difficulty of access to remote military sites, many of which are tightly secured intelligence posts, and because of the wide dispersal and relatively small size of these remote sites, it was constitutionally permissible for the Governor to forego study of the military at these remote sites. However, because the consistency of results of the surveys done at larger installations made it feasible to apply these results to the smaller installations, such a course of action would

have been less restrictive than including all the military at remote sites in the population as the Governor did. The non-resident population of the smaller sites should therefore have been calculated on the basis of available survey data and excluded from the population base. Analysis of the population figures shows that such a procedure would materially affect only District 26. See Appendix F. Because the deviation from ideal district sizes would exceed 10% once the formula was applied to the remote sites, and because the Governor has demonstrated no rational basis for the variations in Districts 25 and 26, an adjustment must be made to balance the sizes of the two districts and bring them within the constitutionally permissible deviations from the ideal district size. Groh v.

Egan, 526 P.2d at 882. The court suggests that such an adjustment could be made by simply including Platinum (population 55) and Goodnews Bay (population 168) within District 26.

V. Cordova-Inside Passage District

The plaintiff claims that including Cordova in House Election District 2 violates the constitutional requirements that house districts be compact and contain relatively integrated socio-economic areas. Since there is no due process or equal protection argument here, the standard of review is whether the configuration of District 2 is "reasonable and not arbitrary." Groh v. Egan, 526 P.2d at 863, 866. "Particularly where specific objections have not been presented to us, we do not believe it appropriate to substitute out [sic]

judgment for that of the constitutionally empowered authority regarding the wisdom of delicate adjustments to be made in political boundaries." Id. at 889.

VI. Findings of Fact

Cordova is geographically located in Prince William Sound, but Cordova is a waterlocked port, i.e. its port serves its people and community and no others; there is no transport link to another community through that port. Imports of general commodities to Cordova come via four conveyances: Sealand freighter, the Alaska Ferry System, Alaska Airlines and Alaska Aeronautical Industries (AAI) air taxi. Up to 90% of the imports (10,000 of 11,000 tons) come to Cordova on Sealand from Seattle via Kodiak; up to 9% of the imports (1000 of 11,000 tons) come to Cordova from Anchorage warehouses via

the Glenn and Richardson Highways to Valdez where the trailers are loaded on an Alaska State Ferry. Cordovans also rely on the Ferry as the sole means for transporting vehicles to and from Cordova. A very small percentage of imports to Cordova come via Alaska Airlines from Anchorage or Seattle, or on AAI from Anchorage.

Cordovans are all but totally dependent, directly or indirectly, on the fishing industry for their livelihoods. Only the government sector does not look to the fishing industry for its payroll.

Cordova's fishermen harvest salmon and crab which are processed in Cordova's four major canneries. The fishing gear employed is purse seine and drift gillnet gear. Over the last decade approximately 85% of the salmon caught in Prince

William Sound have been caught by purse seiners. The remainder of the catch has been on drift gillnet gear. To the same extent that fishing dominates the Cordova economy, Cordova fishermen dominate the Prince William Sound fisheries. Nearly all the fishermen who fish the Sound are either Cordova residents or non-local fishermen who use Cordova as a base of operations. Of the 914 limited entry permits issued for the Sound salmon fisheries, over 50% are held by Cordova residents; over 28% are held by non-Alaska residents; less than 5% of the permits are held by Valdez residents; less than 1% are held by Whittier residents; and less than 1% are held by Seward residents.

Cordova's fish processing industry is controlled by interests from outside

the Sound. Two of the four largest plants are owned by Japanese concerns. One is owned by the Juneau-based regional Native corporation, Sealaska Corporation. The fourth is owned by the Anchorage-based regional Native corporation, Chugach Natives Inc., a substantial portion of whose shareholders live in Cordova.

Virtually all of Cordova's fishing harvest, which is the vast majority of Cordova's export tonnage, is shipped to Seattle or the Far East via Kodiak.

Cordova has minimal ties and shares few common concerns with Seward. Both are served by the State Ferry System on an intermittent basis, but there was no evidence adduced of intervisitation by this means. Both have fish processing plants, but Seward's does not predominate

in the local economy like the Cordova plants in that city's economy. There is very little fishing out of Seward; there are approximately 50 limited entry permit holders (all fisheries) in Cordova. Seward's port imports steel and containerized cargo for the Railbelt and North Slope. There is due to come on line in Seward, in the near future, a coal export facility and a grain export facility. Seward is the southern terminus of the Alaska Railroad. There are no such imports or facilities in Cordova.

Cordova has minimal ties and shares few common concerns with Whittier. Both communities are stops on the state ferry system, but the characters of their ports are vastly different. Whereas, Cordova is a fishing port with no imports for trans-shipment to other communities.

Whittier's port handles more tonnage of general and industrial commodities than any other port in the State; with its rail link, it acts as a port for Anchorage.

Despite their geographic proximity, there are few links between Cordova and Valdez. The evidence showed the following ties:

a. Bowling tournaments have involved both Cordova and Valdez bowlers;

b. their Moose Lodges and Elks Clubs have gathered on occasion;

c. there is interscholastic sports competition between the cities' high schools;

d. approximately 9% of the general commodities imported into Cordova each year (1,000 of 11,000 tons), are shipped by highway from Anchorage warehouses,

through Valdez, and on to Cordova on the Alaska Ferry System.

e. air service is available between Cordova and Valdez three to seven times per week, depending on the season. The traffic peak is in the third quarter, the height of the fishing and tourist season, when, in 1979, two tons of cargo and 300 people were carried between Valdez and Cordova. In the fourth quarter, after the peak, one ton of cargo and 100 passengers were carried between Valdez and Cordova.

Historically, there has been intense rivalry between Valdez and Cordova. At the turn of the century, the cities competed to become the terminus of the railroad serving interior copper mines. There was a bitter fight between Valdez oil interests and Cordova fishermen over

the Trans-Alaska Pipeline System tanker terminal. Litigation is pending in federal court between Valdez oil interests and Cordova fishermen (as intervenor defendants with the Governor) over Alaska's tanker safety legislation.

The economic bases of Cordova and Valdez could not be more divergent. While Cordova relies almost entirely on fishing, Valdez is a gateway port which handles industrial commodities and oil, the latter in enormous volumes. The tax base which the oil terminal affords Valdez gives the city enormous credit against which it has drawn to amass a general obligation bonded debt 40 times as high as Cordova's debt.

All communities of the Inside Passage, with the exceptions of Haines and Skagway, are waterlocked ports whose

imports reach only the single community and its people. They rely totally on the State Ferry and coastal freighters out of Seattle (whose cargo may be transhipped from a larger waterlocked port) for their supply. They rely on the Ferry to transport vehicles and on air carriers to transport passengers. Like Cordova, there is no overland link.

The economic base of the Inside Passage is fishing. Witnesses for both the plaintiff and the Governor identified a number of issues of great concern to fishermen in Cordova, Southeast Alaska and the rest of the State. A Cordova fisherman, Bob Blake, identified the following issues as important: Port development, the raw fish tax, water quality, forest management, and fish processing quality control. Fisherman and

Sealaska Corporation chairman, Byron Mallott, identified the following issues: Limited entry, foreign processors, fish processing quality control and plant safety, vessel safety and State fisheries loan programs.

Commercial timber plays an important, subordinate role in the economy of Southeast Alaska. To date it has not played such a role in Cordova, but there is both interest and potential. The key interested parties in Cordova are the Eyak Native Village Corporation and its regional counterpart, Chugach Natives, Inc. Both of these, Prince William Sound and Cordova concerns, are investigating timber potential in Southeast Alaska, in concern with Sealaska Corporation and local native village corporations.

Cordova is a member of the South-

eastern Conference, a formal lobbying organization for Southeast Alaska municipalities. Among its member communities, in addition to Cordova, are Yakutat, Haines, Skagway, Angoon, Kake, Craig and Klawock.

There is daily jet service between Cordova and Southeast Alaska, both northbound and southbound. There is direct service between Cordova and Yakutat, and one in Juneau, Sitka or Ketchikan, there is both scheduled and charter air-taxi service to the other communities in District 2.

VVI. Conclusions of Law

Alaska Constitution Article VI, Section 6, requires that election districts be "compact". It does not require that election districts be the most compact that could possibly be

devised; considerations of population equality, socio-economic integration, geographic barriers and municipal boundaries may militate against the most compact configuration. The goal to be achieved by the compactness requirement is effective legislative representation, which occurs when persons and communties with substantially like backgrounds and interest, usually but not always in a single region, are joined in a political unit to elect the person of their choice. Effective transportation and communication systems may make a far-flung district functionally compact, especially when the residents of the district have common interests and take advantage of the transportation and communication systems to develop their policy positions and make their views known to their legislator.

District 2 does not violate the requirement of compactness.

Alaskan Constitution Article VI, Section 6, requires that a district "contain as nearly as practicable a relatively integrated socio-economic area." The concept embodies a number of interrelated components, including economic base, ethnic composition, govermental boundaries, community size, transportation and communication links, and lifestyle. The reapportionment process requires a balancing of these components; one may be deemed predominant while another may be subordinated. As well, the socio-economic factors may be subordinated to the consideration of population equality with another district. The balance is to be struck by the Governor and will be sustained unless it lacks any

rational basis. Groh v. Egan at 866.

Socio-eonomic integration does not require that regular social and economic interactions or transactions occur between the communities of the district, although such occurrences are indicia of socio-economic integration. Integration of interests was the basis of the North Slope - Kotzebue District, and the Yukon River District, both drawn by the Alaska Supreme Court in Egan v. Hammond, 502 P.2d at 586. There was, in those districts, no integration of social or economic systems across those vast areas.

The inclusion of Cordova in a district with small Inside Passage communities with identity or similarity of interests in fishing, forest management, ferry service, air service, and other

isssues does not violate the constitutional requirement of socio-economic integration.

Conclusion

Accordingly, based upon the findings of fact and conclusions of law set forth above, the court herein enters a final judgment of dismissal with prejudice in favor of the defendant and against the plaintiff on all claims alleged in the complaint, except as to the adjustment of the boundary lines for District 25 and 26 which the defendant is ordered to correct within 30 days from the date of this decision.

The court finds that the defendant was the prevailing party in this lawsuit. Nonetheless, the plaintiff commenced this action in the public interest, and, therefore should not be assessed any

costs or attorney's fees. Anchorage v. McCabe, 568 P.2d 986 (Alaska 1977). Each party shall bear their own costs and attorney's fees.

There is no just reason for delay in waiting for the defendant to adjust the boundary lines between District 25 and 26 as ordered above, and the court herein expressly directs that judgment be entered this date.

Judgment is hereby entered this 26th day of March, 1982.

David A. Moore, Jr.
Superior Court Judge

APPENDIX C

NOTICE OF APPEAL FILED WITH THE
ALASKA SUPREME COURT
ON AUGUST 26, 1982

THE SUPREME COURT OF THE STATE OF ALASKA

MARILYN CARPENTER,	)	
	)	
Appellant,	)	
	)	
vs.	)	File No. 6728
	)	
JAY S. HAMMOND, Governor of the State of Alaska,	)	
	)	
Appellee.	)	

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Marilyn Carpenter appeals to the Supreme Court of the United States from the final judgment on federal questions of the Alaska Supreme Court entered in this action on June 1, 1982 affirming the judgment of the Superior Court, Third Judicial District.

This appeal is taken pursuant to Title 28, United States Code, Section 1257, subparagraph (2).

Date: August 26, 1982.

Holli Ilene Ploog

APPENDIX D

PROCLAMATION OF REAPPORTIONMENT AND REDISTRICTING

State of Alaska
Executive Proclamation
Of Reapportionment and Redistricting

WHEREAS, Article VI, Section 3 of the Constitution of the State of Alaska requires the Governor to reapportion the House of Representatives immediately following the official reporting of each decennial census of the United States; and

WHEREAS, the Supreme Court of the United States has determined that both houses of the state legislature must be apportioned on the basis of equal population; and

WHEREAS, the Supreme Court of the State of Alaska has determined that the Constitution of the State of Alaska requires the Governor to reapportion the

Senate as well as the House of Representatives, and

WHEREAS, I, Jay S. Hammond, Governor of the State of Alaska, in accordance with Article VI, Section 8 of the Constitution of the State of Alaska, appointed a Reapportionment Board and directed that they prepare an advisory plan to submit to me no later than 90 days following receipt of an official census data; and

WHEREAS, I directed that the Reapportionment Board prepare a plan that would meet the requirements of the United States Supreme Court and the Alaska Supreme Court decisions on reapportionment and those provisions of the Constitution of the State of Alaska that are not in conflict with those decisions; and

WHEREAS, the Reapportionment Board convened pursuant to my order, and after conducting public hearings in 20 communities throughout the state, releasing several draft versions of the reapportionment plan for public comment, and reviewing and revising their recommendations subsequent to receipt of public testimony, submitted their recommendations for reapportionment and redistricting to me on June 9, 1981, and

WHEREAS, Article VI, Section 10 of the Constitution of the State of Alaska requires the Governor to issue a proclamation of reapportionment and redistricting within 90 days from receipt of the recommendations of the Reapportionment Board;

NOW, THEREFORE, I JAY S. HAMMOND, Governor of the State of Alaska, hereby proclaim:

First, the recommendations of the Reapportionment Board for reapportionment and redistricting of the House of Representatives are accepted;

Second, the recommendations of the Reapportionment Board for reapportionment and redistricting for the Senate are accepted with the exception of the recommendations for truncation and length of terms as explained in the accompanying statement;

Third, the terms of all members of the Twelfth State Legislature shall terminate on the third Monday of January, 1983, except those senators elected in 1980 who constituencies have not changed as a result of this reapportionment by more than 40 percent;

Fourth, this reapportionment and redistricting shall be effective for election of members of the Legislature until the next decennial census;

Fifth, this reapportionment and redistricting shall be implemented for the 1982 primary and general elections;

Sixth, in the 1982 general election, 40 members shall be elected to the House of Representatives, and 18 members to the Senate;

Seventh, members of the House of Repreentatives shall be elected in 1982 from the following House Districts;

HOUSE DISTRICT	NAME OF DISTRICT	NUMBER OF REPRESENTATIVES
1	Ketchikan-Wrangell-Petersburg	2 (A-B)
2	Inside Passage-Cordova	1
3	Baranof-Chichagof	1
4	Juneau	2 (A-B)
5	Kenai-Cook Inlet	2 (A-B)
6	North Kenai-South Coast	1
7	South Anchorage	1
8	Hillside	2 (A-B)
9	Sand Lake	2 (A-B)
10	Mid-Town	2 (A-B)
11	West Side	2 (A-B)
12	Downtown	2 (A-B)
13	Mountain View-University	2 (A-B)
14	Muldoon	2 (A-B)
15	Chugiak-Eagle River-Bases	2 (A-B)

16	Matanuska-Susitna	2 (A-B)
17	Interior Highways	1
18	Southeast North Star Borough	1
19	Outer Fairbanks	1
20	Fairbanks City	2 (A-B)
21	West Fairbanks	1
22	North Slope-Kotzebue	1
23	Norton Sound	1
24	Interior Rivers	1
25	Lower Kuskokwim	1
26	Bristol Bay-Aleutian Islands	1
27	Kodiak-East Alaska Peninsula	1

Eighth, members of the Senate shall be elected in 1982 from the following Senate Districts except those seats where an asterisk (*) indicates the existing senator's term will continue until January 1985;

SENATE DISTRICT	COMPOSED OF HOUSE DISTRICTS	LENGTH OF TERM
A	Ketchikan-Wrangell-Petersburg	4 years

B	Inside Passage-Cordova Baranof-Chichagof	2 years *
C	Juneau	4 years
D	Kenai-Cook Inlet-North Kenai-South Coast-South Anchor.	Seat A-2 years Seat B-4 years
E	Hillside-Sand Lake	Seat A-2 years Seat B-4 years
F	Mid-Town-West Side	Seat A-2 years Seat B-4 years
G	Downtown-Mountain View-University	Seat A-2 years Seat B-4 years
H	Muldoon-Chugiak-Eagle River-Bases	Seat A-2 years Seat B-4 years
I	Matanuska-Susitna	2 years *
J	Interior Highways-Southeast-North Star Borough	2 years
K	Outer Fairbanks-Fairbanks City-West Fairbanks	Seat A-2 years Seat B-4 years
L	North Slope-Kotzebue Norton Sound	4 years
M	Interior Rivers-Lower Kuskokwim	4 years
N	Bristol Bay-Aleutian Islands-Kodiak-East Alaska Peninsula	2 years

Ninth, in all two-member house and senate districts candidates will run for designated seats indicated by Seat A and Seat B. Candidates will file for one of the available seats. Each qualified voter in the district may cast one vote for their choice among the candidates for each seat. The candidate receiving the greatest number of votes cast for each seat is elected.

IN WITNESS WHEREOF I have set my hand and caused the seal of the State of Alaska to be affixed, this _____ day of _____, 1981.

_____
JAY S. HAMMOND
GOVERNOR
STATE OF ALASKA

Attest:

_____
TERRY MILLER
LIEUTENANT GOVERNOR
STATE OF ALASKA

APPENDIX E

REPORT OF ADVISORY REAPPORTIONMENT BOARD (Pages 9-11)

The only segment of the population thought to contain large and readily identifiable concentrations of non-residents in military personnel and their dependents. Historically, this group has been concentrated in great numbers in a handful of communities. Their residency factor has been thought to be very low.

The Alaska Supreme Court has approved the principle that non-resident military personnel may constitutionally be excluded from the reapportionment population base:

> (W)hile the clause of the Alaska Constitution seeking to exclude military as a class is unconstitutional, that is not to say that

> some military cannot be excluded as a permissible device for limiting the impact of transients and non-residents on legislative districting.

Egan V. Hammond, 502 P. 2d 586, 869 (AK 1972). More to the point, the court observed:

> We hold that it was reasonable for the Board to exclude some proportion of military personnel not merely because of their transcience, but because a significant number of Alaska-based military personnel exercise an option to be non-Alaskans, despite their physical presence here. This phenomenon is well demonstrated by the minuscule voter registration on military enclaves. It is thus not offensive to notions of equal protections to exclude from the population base even military personnel who have lived in Alaska for substantial periods of time, so long as those people have exercised their option to remain residents and domiciliaries of other states.

ID. at 872-873.

Dr. Kruse determined that there are seven military installations with populations large enough to affect the reapportionment process. These installations

are Elmendorf Air Force Base, Eielson Air Force Base, Fort Wainwright, Fort Richardson, Fort Greely, Adak Naval Base, and the Kodiak Coast Guard Station.

Because Military records are not updated consistently, they are deemed unreliable. A full census of military personnel and their dependents was rejected both because of cost and becuase more reliable results can actually be obtained from a survey of scientific sample. Thus, it was decided to proceed with a survey of military personnel and dependents, both on- or off-base.

The survey sought to answer two questions: First, did the respondent consider Alaska to be his or her home; second, was the respondent registered to vote in Alaska. If the answer to <u>either</u> of these inquiries was "yes", the respondent was deemed to be a resident;[1] put

another way, a person was not deemed to be a non-resident unless he or she neither voted nor considered Alaska home.

The survey sought to answer two questions: First, did the respondent consider Alaska to be his or her home; second, was the respondent registered to vote in Alaska. If the answer to <u>either</u> of these inquiries was "yes", the respondent was deemed to be a resident;[1] put another way, a person was not deemed to be a non-resident unless he or she neither voted nor considered Alaska home.

Separate non-residency factors were obtained for on-base service members, on-base dependents, off-base service members and off-base dependents. The off-base results were achieved by use of address lists provided by the military branches which allowed Dr. Kruse to determine, with precision, how many service members

and dependents live in each off-base enumeration district near a given installation. (Original footnotes omitted.)

1 This statement is incorrect. According to the study which actually determined citizenship, the military had to not only consider Alaska to be their home, but also had to plan to make Alaska their home when they left the military.

"All military personnel who reported that they had registered to vote in the State of Alaska are treated as Alaska residents. In addition, all personnel who consider their home to be in Alaska and plan to make their home in Alaska when they leave the military are treated as Alaska residents, regardless of whether they have registered to vote in Alaska."

Kruse, Design and Implementation of Alaska 1980 Data Collection Effort, 1980 p. 42.